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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,021	11/07/2001	Jean-Louis H. Gueret	08048.0018-00	4756

7590 01/15/2003

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
3751	11

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/986,021

Applicant(s)

Gueret

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Nov 1, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-83 is/are pending in the application.

74-78, 81-83

4a) Of the above, claim(s) 7, 10, 12-22, 34, 37, 38, 43-47, 49, 61, 62, 70, 71 is/are withdrawn from consideration.

A

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6, 8, 9, 11, 23-33, 35, 36, 39-42, 48, 50-60, 63-69, 71-73, 79, and is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on Nov 7, 2001 is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6, 8

6) Other:

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DETAILED ACTION

Drawings

drop 1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: *drop drop* 53 (note Fig. 7) and 96 (note Fig. 9). A proposed drawing correction or an amendment to the specification to add the reference signs in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

drop 2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, (A) *drop* the applicator element being formed as a foam of a plastic material, as called for by claims 35 and 36; and (B) *drop* the flexible-walled receptacle, as called for by claims 42 and 73, must be shown or the features canceled from the claims. No new matter should be introduced or it will not be entered. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Applicant is required to submit a proposed drawing correction **in reply to this Office action** in order to avoid abandonment of the application. Any proposal by the applicant for amendment of the drawing to cure defects **MUST** be embodied **in a SEPARATE LETTER to the Draftsman**. See MPEP §608.02(r). The objection to the drawings will not be held in abeyance.

Specification

4. Applicant is reminded of the proper content of an abstract of the disclosure. A patent abstract is a concise statement of the technical disclosure of the patent and **should include that which is new in the art** to which the invention pertains. If the patent is of a basic

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nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and **legal phraseology often used in patent claims**, such as "means" and "said", **should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title.

It should avoid using phrases which can be implied, such as, "The disclosure concerns", "The disclosure defined by this invention", "The disclosure describes", etc.

drop 6. The abstract of the disclosure is objected to because: (A) it fails to state specifically that which is new in the art; (B) it uses legal phraseology often used in patent claims such as "comprising", etc.; (C) it uses phrases which can be implied such as "The invention relates"; (D) *drop* --a-- should be inserted after "contain" on line 2; and (E) *drop* --the-- should be inserted after "with" on line 6. Correction is required. See MPEP § 608.01(b).

7. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, **each of the lettered items should appear in upper case, without underlining or bold type, as section headings**. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).

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- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

8. Content of Specification

- (a) **Title of the Invention**: See 37 CFR 1.72(a) and MPEP § 606. **The title of the invention should be placed at the top of the first page of the specification.** It should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) **Cross-References to Related Applications**: See 37 CFR 1.78 and MPEP § 201.11.
- (c) **Statement Regarding Federally Sponsored Research and Development**: See MPEP § 310.
- (d) **Reference to a "Microfiche Appendix"**: See 37CFR 1.96(c) and MPEP § 608.05, if the application was filed before March 1, 2001. The total number of microfiche and the total number of frames should be specified. Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc and an incorporation by reference of the material on the compact disc.
- (e) **Background of the Invention**: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) **Field of the Invention**: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

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(2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

(f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly

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or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims.
- (k) Drawings: See 37 CFR 1.81, 1.83-1.85, and MPEP § 608.02.
- (l) Sequence Listing, if on paper: See 37 CFR 1.821-1.825.

~~drop~~ 9. The disclosure is objected to because of the following informalities: (A) it contains no section headings; (B) the title of the invention should be placed at the top of the first page of the specification; and (C) it contains numbered paragraphs rather than line numbering which is used to enter amendments. Appropriate correction is required.

~~drop~~ 10. The following informalities in the specification are noted: (A) on page 13, line 4, "86" should read --85--; and (B) on page 14, line 24, "230" should read --231--. Appropriate correction is required.

11. The following informalities in the claims are noted: (A) in claims 1, on line 2, --a-- should be inserted after "contain"; (B) in claims 1, on line 9, --the-- should be inserted after "with"; (C) in claims 2 and 53, on line 5, --the-- should be inserted after "causing"; (D) in claim 3, on lines 2 and 4, --the-- should be inserted before "product"; (E) in claim 23, on line 3, --the-- should be inserted after "with"; (F) in claim 50, on line 2, --a-- should be inserted after "contain"; (G) in claim

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50, on line 8, --the-- should be inserted after "with"; and (H) in claim 60, on line 1, "portion" should read --portions--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claims 1-49 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 calls for "a closure element" as well as "a closure element configured to close the housing in a substantially leak-proof manner when the applicator element is received at least partially in the housing". However, the specification fails to adequately describe what specific structure constitutes such a closure element as well as its configuration to close the housing in a substantially leak-proof manner when the applicator element is received at least partially in the housing.

14. Claims 2 and 53 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 2 and 53 call for "the device" to be "configured to allow a reduction . . . from a first volume to a second volume smaller than the first volume" wherein "the reduction from the first volume to the second volume generates pressure inside the receptacle for causing product to flow into the housing (enclosure) via the dip tube". However, the specification fails to adequately describe what specific structure constitutes such a configuration of the device to allow a reduction from a first volume to a second volume smaller than the first volume wherein the reduction from the first volume

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to the second volume generates pressure inside the receptacle for causing product to flow into the housing or enclosure via the dip tube.

for 15. Claims 6 and 57 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the wall defining the end of the housing (or enclosure) to be "substantially planar" or "concave towards the applicator element (note lines 17-19 on page 5), does not reasonably provide enablement for the end wall to be planar, as called for by claims 6 and 57. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

for 16. Claims 23-32 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the removable unit 85 to be "refilled by means of a receptacle 71 having . . . a neck 72 in which an insert 73 is fixed to define a housing suitable for receiving the removable unit 85 when it is refilled" (note lines 16-22 on page 12) and "the insert 73 has a hinged lid 75 . . . for the purpose of closing the housing 74 when the removable unit 85 is absent" (note lines 23-24 on page 12), does not reasonably provide enablement for "at least one of the closure element and the housing defines a removable unit configured to be associated with the receptacle to fill the unit with the product" with "the applicator element" to be "received within the removable unit", as called for by claim 23. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

for 17. Claims 24-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "an insert 73 is fixed to define a housing" with "the insert 73" having "a hinged lid 75 secured thereto for the purpose of closing the housing 74" (note lines 20-21 and 23-24 on page 12) and "the removable unit 85 comprises a bottom portion 86 and a top portion 87" with the top portion 87 serving as a handle (note lines 3-8 on page 13), does not reasonably

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provide enablement for “the housing” defining “a body and the closure element defines a handle, the body and the handle cooperating to define an inside space in which the applicator element is contained”, as called for by claim 24. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

~~drop~~ 18. Claim 26 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “a bottom portion 86 and a top portion 87 that are assembled together by screw fastening” (note lines 3-4 on page 13), does not reasonably provide enablement for “the handle and the body” to be “connected by screw fastening”, as called for by claim 26. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

~~drop~~ 19. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “the top portion 87 has a sealing skirt 100” (note line 9 on page 13), does not reasonably provide enablement for “at least one of the handle and the body of the removable unit comprises a sealing skirt”, as called for by claim 27. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

~~keep~~ 20. Claims 29, 31 and 32 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 29 calls for “a portion located on the receptacle” as well as the “portion” is “configured to removably receive at least part of the removable unit”. However, the specification fails to adequately describe what specific structure constitutes such a portion on the receptacle as well as the configuration of the portion that removably receives at least part of the removable unit.

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Prop 21. Claim 30 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "an insert 73 is fixed to define a housing" with "the insert 73" having "a hinged lid 75 secured thereto for the purpose of closing the housing 74 when the removable unit 85 is absent" (note lines 20-21 and 23-24 on page 12), does not reasonably provide enablement for "a second closure element for closing the portion when the removable unit is not received by the portion", as called for by claim 30. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

Prop 22. Claims 32 and 69 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the receptacle to have a neck in which an insert is fixed to define a housing for receiving the removable unit (note lines 20-21 on page 12) and an end wall of the insert to have an end-piece for fixing a dip tube (note from line 24 on page 12 to line 1 on page 13), does not reasonably provide enablement for a "portion comprises a sleeve having an open end through which said at least a part of the removable unit passes and another end placed in flow communication with the variable inside volume via the dip tube, as called for by claims 32 and 69. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Prop 23. Claims 50-60, 63-69, 71-73, 79 and 80 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a bottom portion and a top portion that are assembled together (note lines 3-4 on page 13) and the removable unit housing an applicator element (note lines 4-5 on page 13), does not reasonably provide enablement for "a first portion and a second portion configured to cooperate together to define a substantially leak-proof enclosure for the applicator element", as called for by claim 50. The specification does not enable any person skilled

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in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

drop 24. Claim 63 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "the top portion 87 has a sealing skirt 100" (note line 9 on page 13), does not reasonably provide enablement for "at least one of the first portion and the second portion comprises a sealing skirt", as called for by claim 63. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

no 314 25. Claims 65-70 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 65 ^{in # 015} calls for "a third portion located on the receptacle" as well as "the removable unit is configured to be removably associated with the third portion". However, the specification fails to adequately describe what specific structure constitutes such a third portion on the receptacle as well as the configuration of the removable unit that is associated with the third portion.

26. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

27. Claims 1-49, 51, 54, 58, 59, 79 and 80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

drop 28. Claim 1 contains a term lacking proper antecedent basis. The claim recites the limitation "the bottom" in line 7. There is insufficient antecedent basis for this limitation in the claim.

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~~drop~~ 29. Claims 3 and 54 contain a term lacking proper antecedent basis. The claims recite the limitation "the level of product" in lines 2 and 4. There is insufficient antecedent basis for this limitation in the claims.

~~drop~~ 30. Claim 12 contains a term lacking proper antecedent basis. The claim recites the limitation "the applicator" in line 1. There is insufficient antecedent basis for this limitation in the claim.

~~drop~~ 31. Claim 30 contains a term lacking proper antecedent basis. The claim recites the limitation "the portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

~~drop~~ 32. Claim 51 contains a term lacking proper antecedent basis. The claim recites the limitation "the application element" in line 2. There is insufficient antecedent basis for this limitation in the claim.

~~drop~~ 33. Claim 79 contains a term lacking proper antecedent basis. The claim recites the limitation "the application element" in line 1. There is insufficient antecedent basis for this limitation in the claim.

~~drop~~ 34. Claims 3 and 54 are indefinite since it is unclear as to how the product recited on line 1 relates to the product recited in claims 1 and 50, respectively.

~~drop~~ 35. Claims 40 and 71 are indefinite since it is unclear as to how the product recited on line 1 relates to the product recited in claims 1 and 50, respectively.

Claim Rejections - 35 USC § 102

36. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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37. Claims 1-6, 8, 9, 33, 39-42 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Deakers. Deakers discloses a product application device having all the claimed features including a receptacle (constituted by bottle 2) containing a product constituted by the liquid contained in the receptacle/bottle 2 (note Fig. 1); an applicator element constituted by fabric 20; a housing constituted by holding body 5 (note Fig. 6) for receiving part of the fabric applicator 20; a closure element constituted by cap member 26 which functions to close the housing 5 in a substantially leak-proof manner (note lines 41-50 in col. 3); and a dip tube 9 that extends substantially to the bottom of the receptacle 2 (note Fig. 1) and enables the housing 5 to be in flow communication with the liquid product in the receptacle 2. With respect to claim 2, Deakers also discloses that the sides of the bottle 2 are made of flexible plastic material such that the sides can be squeezed (note lines 25-30 in col. 2). With regard to claim 3, Deakers further discloses that an end of the dip tube 9 extends substantially to the bottom of the receptacle 2 (note Fig. 1). With regard to claim 4, Deakers additionally discloses that the dip tube communicates with the bottom end of the housing 5 (note Fig. 1). With respect to claim 5, Deakers also discloses that the housing 5 has an end wall 12 located at a bottom end of the housing 5 (note Fig. 1). With regard to claim 6, Deakers further discloses that the bottom end wall of the receptacle 2 is substantially planar in configuration (note Fig. 1). With respect to claim 8, Deakers additionally discloses that the dip tube 9 is a separate element fixed to the housing (note lines 34-37 in col. 2). With respect to claim 9, Deakers further discloses that the dip tube 9 is fixed to an end piece 7 that is integrally formed with the end wall 12 (note Figs. 1 and 4). With regard to claim 33, Deakers also discloses that the applicator 20 is formed of napped fabric (note lines 6-8 in col. 3) in which the nap is inherently compressible. With respect to claim 39, Deakers further discloses that the applicator 20 is formed of napped fabric (note lines 6-8 in col. 3) which inherently includes felt material. With respect to claim 40, Deakers additionally discloses that the product being applied is a deodorant solution (note lines 20-22 in col. 1) which inherently

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constitutes a cosmetic product since deodorants are used to mask unpleasant odors as well as to improve one's appearance, such as preventing the embarrassing underarm wetness. With regard to claim 41, Deakers also discloses that the product being applied is a deodorant solution (note lines 20-22 in col. 1) which inherently constitutes a perfume product since deodorants are used to mask as well as cover up unpleasant odors. With respect to claim 42, Deakers further discloses that the receptacle 2 has flexible walls (note lines 25-30 in col. 2). With respect to claim 48, Deakers additionally discloses that the housing 5 has an open end wherein the closure element 26 is configured to close the open end (note Figs. 1 and 2).

38. Claims 1-6, 8, 9, 33, 35, 36, 40-42 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartzman. Schwartzman discloses a product application device having all the claimed features including a receptacle constituted by container 10 containing a product constituted by the fluid 12 contained in the receptacle/container 10 (note Fig. 1); an applicator element (constituted by cover 26); a housing constituted by retaining ring 18 for receiving part of the applicator element 26; a closure element constituted by valve assembly 50 which functions to close the housing 18 in a substantially leak-proof manner (note lines 8-11 in col. 3); and a dip tube 64 that extends substantially to the bottom of the receptacle 10 (note Fig. 1) and enables the housing 18 to be in flow communication with the fluid product in the receptacle 10. With respect to claim 2, Schwartzman also discloses that the container 10 is made of flexible material such that it can be squeezed (note lines 41-42 in col. 2 and lines 35-37 in col. 1). With regard to claim 3, Schwartzman further discloses that an end of the dip tube 64 extends substantially to the bottom of the receptacle 10 (note Fig. 1). With regard to claim 4, Schwartzman additionally discloses that the dip tube 64 communicates with the bottom end of the housing 18 (note Figs. 1, 2, 5). With respect to claim 5, Schwartzman also discloses that the housing 18 has an end wall 40 located at a bottom end of the housing 18 (note Fig. 1). With regard to claim 6, Schwartzman further discloses that the bottom end

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wall of the receptacle 10 is planar in configuration (note Fig. 1). With respect to claim 8, Schwartzman additionally discloses that the dip tube 64 is a separate element fixed to the housing (note lines 2-3 in col. 3). With respect to claim 9, Schwartzman further discloses that the dip tube 64 is fixed to an end piece 62 that is integrally formed with the end wall 40 (note Figs. 1 and 2). With regard to claim 33, Schwartzman also discloses that the applicator 26 is formed of foam 30 and fabric 32 (note lines 51-54 in col. 2) which are inherently compressible. With regard to claim 35, Schwartzman additionally discloses that the applicator 26 is formed of a foam formed of a plastic material (note Figs. 1, 2, 5 and lines 51-54 in col. 2). With regard to claim 36, Schwartzman also discloses that the plastic material is polyurethane (note lines 51-52 in col. 2). With respect to claim 40, Schwartzman additionally discloses that the product being applied is a cosmetic product (note lines 29-30 in col. 1). With regard to claim 41, Schwartzman also discloses that the product being applied is a cosmetic product applied to the skin of the user (note lines 29-30 and 35-39 in col. 1) which inherently constitutes a perfume product since such cosmetics are well known to contain perfume. With respect to claim 42, Schwartzman further discloses that the receptacle 10 is a flexible walled receptacle (note Fig. 2 and lines 41-42 in col. 2). With respect to claim 48, Schwartzman additionally discloses that the housing 18 has an open end wherein the closure element 50 is configured to close the open end (note Figs. 1, 2, 5).

39. Claims 1, 3-6, 8, 23-27, 29, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Amen. Amen discloses a product application device having all the claimed features including a receptacle constituted by container C containing a product; an applicator element 29; a housing 1 for receiving the applicator element 29 (note Figs. 3 and 4); a closure element constituted by top plate 33 configured to close the housing 1 in a substantially leak-proof manner when the applicator element 29 is received in the housing 1; and a dip tube (constituted by cylinder 7 and piston 14) configured to extend substantially to the bottom of the receptacle C (note Fig. 3) to enable

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the housing 1 to be in flow communication with the product flowing from the receptacle C. With regard to claim 3, Amen also discloses that an end of the dip tube portion 7 extends substantially to the bottom of the receptacle C (note Fig. 3). With regard to claim 4, Amen further discloses that the dip tube portion 14 communicates with the bottom end of the housing 1 (note Fig. 3). With respect to claim 5, Amen additionally discloses that the housing 1 has an end wall constituted by the bottom of housing 1 (note Fig. 3). With regard to claim 6, Amen further discloses that the bottom end wall of the receptacle C is planar in configuration (note Fig. 3). With respect to claim 8, Amen additionally discloses that the dip tube portion 14 is a separate element fixed to the housing (note Fig. 3). With respect to claim 11, Amen also discloses that the applicator element 29 is removable from the housing 1 (note Fig. 6). With respect to claim 23, Amen further discloses that the closure element 33 defines a removable unit configured to be associated with the receptacle C to fill the unit with the product and that the applicator 29 is received within the removable unit. With regard to claim 24, Amen additionally discloses that the housing 1 defines a body and the closure element 33 defines a handle 34 with the body and handle cooperating to define an inside space in which the applicator element 29 is contained (note Figs. 3, 4 and 6). With regard to claim 25, Amen also discloses that the inside space is substantially leak proof. With respect to claim 26, Amen additionally discloses that the handle 34 and the body are connected by screw fastening (note lines 69-71 in col. 3). With respect to claim 27, Amen further discloses that the body has a sealing skirt constituted by the outermost edge of the plate 33 (note Fig. 4). With regard to claim 29, Amen also discloses a portion 21 located on the receptacle C and configured to removably receive the removable unit. With respect to claim 31, Amen additionally discloses that the portion 21 is in flow communication with the volume via the dip tube. With regard to claim 32, Amen also discloses that the portion 21 forms a sleeve having an open top end through which the removable unit passes and another end in flow communication with the volume via the dip tube.

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40. Claims 50, 51, 53, 55-57, 59, 60, 63, 64, 71-73 and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Deakers. Deakers discloses a product application device having all the claimed features including a receptacle (constituted by bottle 2) containing a product constituted by the liquid contained in the receptacle/bottle 2 (note Fig. 1); an applicator element constituted by fabric 20; a first portion constituted by holding body 5 (note Fig. 6) and a second portion constituted by cap member 26 (note Figs. 1 and 2) configured to cooperate together to define a substantially leak-proof enclosure for the applicator element 20 (note lines 41-50 in col. 3); and a dip tube 9 that extends substantially to the bottom of the receptacle 2 (note Fig. 1) and enables the housing 5 to be in flow communication with the liquid product in the receptacle 2. With respect to claim 51, Deakers also discloses that the first portion 5 forms a housing for receiving part of the applicator element 20 and the second portion 27 forms a closure element configured to close the housing (note Figs. 1, 2, 4). With regard to claim 59, Deakers further discloses that the applicator element 20 is fixed to the housing (note Figs. 2 and 4). With respect to claim 53, Deakers also discloses that the sides of the bottle 2 are made of flexible plastic material such that the sides can be squeezed (note lines 25-30 in col. 2). With regard to claim 55, Deakers additionally discloses that the dip tube communicates with the bottom end of the enclosure (note Fig. 1). With respect to claim 56, Deakers also discloses that the enclosure has an end wall 12 located at a bottom end of the enclosure (note Fig. 1). With regard to claim 57, Deakers further discloses that the bottom end wall of the enclosure is substantially planar in configuration (note Fig. 1). With regard to claim 60, Deakers additionally discloses that the first portion 5 and the second portion 26 are connected by screw fastening (note lines 35-40 in col. 3). With respect to claim 63, Deakers also discloses that the second portion 26 has a sealing skirt 30 (note lines 30-34 in col. 3). With regard to claim 64, Deakers further discloses that the second portion 26 has a check valve constituted by pin 19 configured to allow product under pressure to pass to the inside space of the enclosure (note Figs. 1 and 4). With respect to claim 71,

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Deakers additionally discloses that the product being applied is a deodorant solution (note lines 20-22 in col. 1) which inherently constitutes a cosmetic product since deodorants are used to mask unpleasant odors as well as to improve one's appearance, such as preventing the embarrassing underarm wetness. With regard to claim 72, Deakers also discloses that the product being applied is a deodorant solution (note lines 20-22 in col. 1) which inherently constitutes a perfume product since deodorants are used to mask as well as cover up unpleasant odors. With respect to claim 73, Deakers further discloses that the receptacle 2 has flexible walls (note lines 25-30 in col. 2). With regard to claim 79, Deakers additionally discloses that the applicator element 20 is fixed to the first portion 5 (note lines 15-18 in col. 3).

41. Claims 50-52, 54-60, 65-69, 79 and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by Amen. Amen discloses a product application device having all the claimed features including a receptacle constituted by container C containing a product (note Fig. 1); an applicator element 29; a first portion constituted by receptacle 21 and a second portion constituted by plate 33 configured to cooperate together to define a substantially leak-proof enclosure for the applicator element 29; and a dip tube (constituted by cylinder 7 and piston 14) that extends substantially to the bottom of the receptacle C (note Fig. 3) and enables the enclosure to be in flow communication with the product in the receptacle C. With respect to claim 51, Amen also discloses that the first portion 21 forms a housing for receiving the applicator element 29 and that the second portion 33 forms a closure element to close the housing (note Fig. 3). With regard to claim 58, Amen further discloses that the closure element is configured to define a handle 34. With respect to claim 59, Amen additionally discloses that the applicator element 29 is fixed to the housing when it is installed therein. With respect to claim 52, Amen further discloses that the first portion 21 and the second portion 33 cooperate to define a removable unit (note Fig. 6). With regard to claim 65, Amen also discloses a third portion (constituted by the bottom of portion 21) located on the receptacle C such

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that the removable unit is configured to be removably associated with the portion. With respect to claim 66, Amen further discloses that the dip tube is connected to the third portion (note Fig. 3). With regard to claim 67, Amen additionally discloses a closure element (constituted by plate 22) for closing the third portion when the removable unit is not associated with the third portion. With regard to claim 68, Amen also discloses that the third portion is configured to be in flow communication with volume via the dip tube (note Fig. 3). With respect to claim 69, Amen further discloses that the third portion forms a portion of a sleeve having an open end through which the removable unit passes and another end placed in flow communication with the volume via the dip tube (note Fig. 3). With respect to claim 54, Amen also discloses that an end of the dip tube portion 7 extends substantially to the bottom of the receptacle C (note Fig. 3). With regard to claim 55, Amen further discloses that the dip tube portion 14 communicates with the bottom end of the housing 1 (note Fig. 3). With respect to claim 56, Amen additionally discloses that the housing 1 has an end wall constituted by the bottom of housing 1 (note Fig. 3). With regard to claim 57, Amen further discloses that the bottom end wall of the receptacle C is planar in configuration (note Fig. 3). With regard to claim 60, Amen also discloses that the first and second portions are connected via screws 31. With respect to claims 79 and 80, Amen further discloses that the applicator element 29 is fixed to the second portion.

Election/Restriction

42. Applicant's election without traverse of the packaging/applicator device of Fig. 8 and of the applicator device of Fig. 9 in Paper No. 10 is acknowledged.
43. Claims 7, 10, 12-22, 34, 37, 38, 43-47, 49, 61, 62, 70, 74-78 and 81-83 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 10.

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44. Applicant states that "at least claims 1 and 50 are generic to all of the identified species. However, the specification fails to support that the embodiment of Fig. 7 has both "a closure element configured to close the housing in a substantially leak-proof manner when the applicator element is received at least partially in the housing", as called for by claim 1, and "a first portion and a second portion configured to cooperate together to define a substantially leak-proof enclosure for the applicator element", as called for by claim 50. Hence, claims 1 and 50 are not generic to all the disclosed species.

Conclusion

45. The Examiner is advising attorneys to FAX any response due to Office actions. The U. S. Patent and Trademark Office (USPTO) is experiencing major delays in matching up papers that were mailed. Due to the Anthrax issue, any mail sent to the USPTO is automatically sent to an irradiation center in Virginia. It has been found that the irradiation process makes papers too brittle to handle. Therefore, the irradiation center has to further copy each paper. The originally filed irradiated papers are then placed in a sealed envelope and put in the associated file. After this irradiation process, the "papers" are then sent to the Office where they are matched with the file. This entire procedure causes months in delays due to the quantity of mailed received. Therefore, it is suggested that any response be sent by FAX especially if a time limit is critical. The FAX number for the technical center where this file is located is given in the paragraph below.

46. Any inquiry concerning this communication from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. Although the examiner participates in the maxi-flex program, she can usually be reached Monday through Friday from 5:30 AM to 2:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson, can be reached on 703-308-2580. The FAX phone number for the organization where this application is assigned is 703-308-7766.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0861.



Kathleen J. Prunner:kjp

January 9, 2003



DAVID J. WALCZAK
PRIMARY EXAMINER